



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC:ddj  
Docket No: 3194-00  
17 October 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by BUPERS memorandum 1430 SER 85/863 of 7 August 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1430  
Ser 85/863  
7 Aug 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF  
[REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #0394-00

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.

2. [REDACTED] has requested restoration in rate, due to his Dishonorable Discharge having been upgraded to General under Honorable Conditions. Having reviewed [REDACTED] petition and records there does not appear to be any evidence to approve his request for restoration. However, it is recommended this petition be forwarded to PERS-06 for an advisory opinion.

A handwritten signature in cursive script, reading "F. L. Cox", is positioned above the typed name.

F. L. COX  
By direction



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

5420  
P0612/256-1

**SEP 12 2000**

From: Office of Legal Counsel (Pers-0612)  
To: Executive Director, Board for Correction of Naval Records  
Via: Assistant for BCNR Matters (Pers-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF  
[REDACTED]

Ref: (a) 10 USC § 1522

Encl: (1) NAVPERSCOM (PERS-00ZCB) memo 5420, dtd 10 Aug 2000  
(2) NAVPERSCOM (PERS-852) memo 1430 dtd 7 Aug 2000  
(3) BCNR File 03194-00 w/Service record  
(4) JAG memo, dtd 25 Feb 1946  
(5) JAG memo, dtd 9 Aug 1946  
(6) CNP memo, dtd 8 Nov 1946  
(7) BCNR review, dtd 29 Aug 1950

1. This responds to your request (enclosure (1)) for comments and recommendation on subject Board for Correction of Naval Records (BCNR) petition. Petitioner requests BCNR upgrade rate from seaman apprentice (E-2) to either pharmacist mate second class (E-5) or pharmacist mate first class (E-6). Concur with enclosure (2). Petitioner offers no evidence to support his request for rate upgrade and the evidence of record (enclosure (3)) fails to demonstrate the existence of probable material error or injustice to support requested action.

2. **Issue:** Whether petitioner's rate of seaman apprentice (E-2) should be upgraded to pharmacist mate second class (E-5) or pharmacist mate first class (E-6).

3. **Short Answer:** No. Petitioner's court-martial conviction was reviewed, approved, and upheld in accordance with law and regulations in effect at that time.

4. **Background:**

a. Petitioner enlisted in the Navy on 10 June 1941 at age 24 and entered active duty on 1 July 1941. Highest rate petitioner obtained was pharmacist mate first class.

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b. Prior to his general court-martial conviction, petitioner was convicted by two summary courts-martial. On 11 September 1942 at his first summary court-martial, petitioner was convicted for breaking and entering an alcohol locker with the intent to steal government whiskey. He was sentenced to confinement for 1 month and forfeitures of \$48.00 per month for four months. On 12 September 1944 at his second summary court-martial, petitioner was convicted for the unauthorized use of a government vehicle and creating a disturbance. He was sentenced to forfeitures of \$20.00 per month for 6 months.

c. On 31 October 1945 at a general court-martial held at the U.S. Naval Training and Distribution Center, San Francisco, California, petitioner was tried and found guilty of three specifications under the charge of scandalous conduct tending toward the destruction of good morals. He was sentenced to forfeit all pay and allowances, reduction to the rate of seaman apprentice (E-2), confinement for a period of 10 years, and to be dishonorably discharged from the United States Navy.

c. The convening authority reduced the period of confinement to 5 years which was later reduced to 3 years by the Secretary of the Navy (enclosure (4)).

d. On 9 August 1946 the Judge Advocate General advised petitioner that the Secretary of the Navy had approved the proceedings, findings, and sentence, and the action of the convening authority in his case (enclosure (5)). The Judge Advocate General also advised petitioner that clemency matters fell under the cognizance of the Bureau of Naval Personnel, Enlisted Discipline Section, and that he was forwarding petitioner's statement and enclosures to that office for consideration. Petitioner's request for clemency was disapproved (enclosure (6)).

e. On 29 January 1946, while serving his period of confinement, petitioner received nonjudicial punishment for attempting to deceive or mislead prison authorities by passing notes.

f. Petitioner has applied to the BCNR on several occasions over the past 50 years. It appears that BCNR first reviewed petitioner's case on 29 August 1950 (enclosure (7)). At that time BCNR was of the opinion that "no error, injustice or basis

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[REDACTED]

for clemency are apparent" and that no change thereof is warranted. BCNR noted that petitioner "had counsel, pleaded not guilty, testified in defense. Evidence amply supported findings of the court." Although not explicitly stated, it appears that BCNR reviewed petitioner's record of trial. Since that time, petitioner's record of trial has been lost.

g. On 2 September 1980 in a subsequent review of petitioner's case, BCNR recommended that petitioner's naval records be corrected to reflect that on 14 January 1947 he was issued a general discharge by reason of misconduct vice the dishonorable discharge actually received on that date. BCNR's finding was based on "petitioner's overall record and particularly the extreme harshness of the general court martial sentence." BCNR noted that "under today's standards ... he [petitioner] would be discharged according to the characterization of his service as reflected by average conduct and proficiency marks." The Secretary of the Navy approved BCNR's recommendation and petitioner was issued a general discharge under honorable conditions effective 14 January 1947.

5. Discussion:

a. Petitioner alleges his court-martial "was faulty throughout" with "poor defense processing" and in violation of the 4th, 5th, 6th, 8th, and 14th Amendments of the Constitution of the United States. However, petitioner offers no evidence in support of his allegations.

b. Enclosure (4) indicates petitioner's court-martial was reviewed and upheld by the Secretary of the Navy. Today, over 50 years later, petitioner's record of trial has been lost or misplaced and is no longer available for BCNR to conduct a de novo review. That said, BCNR procedures for review require it to rely on the presumption of regularity to support official actions of public officers and, in the absence of substantial evidence to the contrary, presume that they have properly discharged their official duties. Under its procedures for review, BCNR should presume that Secretary of the Navy properly discharged his official duty in conducting the review of the petitioner's court-martial. Petitioner has furnished no evidence in support of a contrary conclusion.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF  
[REDACTED]

c. Enclosure (5) indicates petitioner's clemency request was subsequently reviewed in accordance with Navy regulations in effect at that time and disapproved. Again, petitioner has provided no evidence to suggest otherwise.

6. **Conclusion:** Petitioner's request for rate upgrade should be denied. There is no error or injustice that warrants the requested action.



Steven P. Hester  
Assistant Legal Counsel